APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,491	01/27/2001	Raymond Anthony Joao	RJ180	7937

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EXAMINER
VAN BRAMER, JOHN W

ART UNIT	PAPER NUMBER
3622	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	09/771,491	JOAO, RAYMOND ANTHONY
	Examiner	**Art Unit**	
	John Van Bramer	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 December 2008 and 11 January 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *101-122* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *101-122* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date *123107*.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee

set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since

this application is eligible for continued examination under 37 CFR 1.114, and the

fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous

Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission

filed on December 31, 2007 has been entered.

Response to Amendment

2.   The amendments filed on December 31, 2007 and January 11, 2008,

cancelled claims 103 and 120. New claims 121 and 122 were added and claims

101, 102, 104, 109, 110, 112, 113, 118 and 119 were amended. Thus, the currently

pending claims in the applications are Claims 101, 102, 104-119, 121 and 122.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 101, 102, 104-115, and 118, 119, 121, and 122 are rejected under 35

U.S.C. 103(a) as being unpatentable over Capek (U.S. Patent Number: 6,026,369)

in view of McCandless ("Web advertising" Intelligent Systems and Their

Applications, IEEE, Volume: 13, Issue: 3, May/Jun 1998, page(s): 8-9) in further

view of Merriman et al. (U.S. Patent Number: 5,948,061).

Claim 101, 118, 119, 121, and 122:   Capek discloses a computer-implemented

method, comprising:

a. At least one of receiving and storing information regarding a first request by a

   content provider to be notified regarding an occurrence of an event, wherein the

   event is at least one of a request by a merchant for advertising space, a storing

   of an offered price for an advertising space, and a storing of a term or condition

   for an advertising offering. (Col 3, lines 1-7) (Capek discloses content providers

   transmitting summary information to the control distribution node which is a

   request, by the content provider, for notification of merchant wishing to place

   targeted advertisements that satisfy the criteria set forth in the summary

   information.)

b. At least one of receiving and storing information regarding at least one of a

   request by a merchant for advertising space, an offered price for an advertising

   space, and a term or condition for an advertising offering. (Col 3, lines 9-12)

   (Capek discloses an advertiser (merchant) requesting advertising space)

c. Detecting the occurrence of the event with a processing device. (Col 3, lines 9-
    17) (Capek discloses that the arrival of the request by a merchant is detected
    and process 12 is initiated. Process 12 is used to match the advertisement
    requests with content providers)

d. Generating a message containing information regarding the event with the
    processing device, wherein the first message is automatically generated by the
    processing device in response to the occurrence of the event. (Col 3, lines 25-29)
    (Capek discloses that a placement query is generated and sent to the access
    providers that satisfy the criteria set forth in the placement request)

e. Transmitting the message to a computer or a communication device associated
    with the content provider. (Col 3, lines 25-29) (Capek discloses that a placement
    query is generated and sent to the access providers that satisfy the criteria set
    forth in the placement request)

f. Receiving a second request, wherein the second request is transmitted from the
    computer or the communication device associated with the content provider,
    wherein the second request is a request for information regarding an offer by a
    merchant associated with the event to create or establish a marketing
    relationship. (Col 3, lines 31-44) (Capek discloses the content providers sending
    a request indicating the number of placements that they are able to satisfy; this is
    request for information regarding an offer since the content provider is not
    guaranteed that it will be allocated the number of placements it is requesting.)

g. Generating a second message, wherein the second message contains at least one of information regarding the offer by the merchant to create or establish a marketing relationship, information regarding the merchant and contact information regarding the merchant. (Col 3, lines 49-51) (Capek discloses generating and sending information regarding the offer by the merchant to the content providers. The information is the number of placements that the content provider has been chosen to provide.)

h. Transmitting the second message to the computer or the communication device associated with the content provider. (Col 3, lines 49-51) (Capek discloses generating and sending information regarding the offer by the merchant to the content providers. The information is the number of placements that the content provider has been chosen to provide.)

i. Receiving information indicating that the content provider has accepted the offer by the merchant to create or establish a marketing relationship. (Col 3, line 66 through Col 4, line 4) (Capek discloses that the content provider sends information regarding the number of placements that they have delivered to their clients. The fact that the content provider delivered the placements to their clients inherently indicates that information sent by the content provider that they have accepted the offer.)

j. Processing the information indicating that the content provider has accepted the offer by the merchant to create or establish a marketing relationship between the merchant and the content provider. (Col 4, lines 4-7) (Capek discloses that the

information sent by the content provider, which indicates acceptance of the offer,

is processed into a summarization by the CDN)

k. Storing information regarding the marketing relationship between the merchant

and the content provider in a database or a memory device. (Col 4, lines 4-7)

(Capek discloses that the information sent by the content provider, which

indicates acceptance of the offer, is processed into a summarization (stored) by

the CDN)

While Capek is silent regarding how the Content Distribution Network (CDN)

utilizes the summarized count information that indicates the number of placements

served by each content provider, the analogous art of McCandless discloses that

various metrics are used to measure web advertising. One such common method is

based upon unique impressions which occur when an ad is served to one browser

within a fixed time window. The pricing of such ads are typically priced by the

number of impressions (Page 2, Col 1, lines 15-29). Therefore, it would have been

obvious to one of ordinary skill in the art at the time the invention was made for the

CDN to contact the advertiser and report the placement information in order to

receive payment for said placements. The rational for doing so is that there are a

limited number of predictable ways in which the CDN could be reimbursed for

providing to the requested number of placement. One such predictable method of

billing for the placement would be to contact the advertiser and provide them with a

bill containing a summary of advertisement placements that were provided.

While Capek does not specifically state that the marketing relationship is an affiliated marketing program some sort of affiliation between the access points and the advertising server must exist in order for the advertising server to work in conjunction with the access points to server the advertisement to the customer via the access point. However, for the sake of clarity, the analogous art of Merriman discloses the serving of advertisements from an advertisement server to affiliate sites. The affiliate sites are customer access points where advertisements are provided from an advertisement server. This relationship is analogous to the method of serving of advertisements disclosed by Capek. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the invention disclosed by Capek in an affiliate marketing relationship. The rational for using Capek to server advertisements in affiliate marketing relationships is that there are a limited number of predictable types of marketing relationships that allow for the serving of advertisements to customers accessing a site. Affiliated marketing relationships are one well known type of said limited number of predictable types of marketing relationships.

Claim 102:   Capek, McCandless, and Merriman disclose the computer-implemented method of Claim 101, wherein the computer implemented method is performed via, on, or over at least one of the Internet and the World Wide Web. (Capek: Col 1, lines 5-20)

Claim 104:   Capek, McCandless, and Merriman disclose the computer-
implemented method of Claim 101, further comprising: transmitting information
regarding an advertisement associated with the merchant to a computer associated
with the content provider via, on, or over, at least one of the Internet and the World
Wide Web. (Capek: Col 1, lines 5-20)

Claim 105:   Capek, McCandless, and Merriman disclose the computer
implemented method of Claim 104. While Capek does not specifically disclose that
the information regarding an advertisement associated with the merchant includes a
banner advertisement the analogous art of McCandless discloses that the most
common type of web advertisements is the banner ad (Page 1, Col 3, line 38
through Page 2, Col 1, line 14). Therefore, it would have been obvious to one of
ordinary skill in the art at the time the invention was made to use banner
advertisements in the invention disclosed by Capek. The rational for including
banner advertisements is that they are the most common type of web
advertisements.

Claim 106:   Capek, McCandless, and Merriman disclose the computer
implemented method of Claim 104, while Capek and McCandless do not specifically
state that the advertisement contains printed matter that include a logo or an icon, it
would have been obvious to one of ordinary skill in the art at the time the invention
was made to include a corporate icon or logo on the advertisement. The rational for

including such a logo or icon is that the majority of advertisements include such
predictable printed matter. Such printed matter is typically included in order to
provide customers with a method of identifying the company that produces the
product or service that is advertised.

Claim 107:   Capek, McCandless, and Merriman disclose the computer
implemented method of Claim 104, wherein the information regarding an
advertisement associated with the merchant includes a link to a computer or a web
site associated with the merchant. (Capek: Col 4, lines 15-39)

Claim 108:   Capek, McCandless, and Merriman disclose the computer
implemented method of Claim 104, further comprising: placing information regarding
the advertisement associated with the merchant on a computer or a web site
associated with the content provider. (Capek: Col 3, line 66 through Col 4, line 1;
and Col 4, lines 15-39)

Claims 109, 110, 112, and 113: Capek, McCandless, and Merriman disclose the
computer implemented method of claim 101. While Capek does not specifically
recite the determining of a commission or a referral fee due to the content provider
pursuant to the marketing relationship, the analogous are of McCandless discloses
that charging advertisers based upon based upon the number of unique impressions
served (Page 2, Col 1, lines 15-29). Therefore, it would have been obvious to one of

ordinary skill at the time the invention was made to utilize the placement summary

disclosed by Capek to charge the advertiser based upon the impressions identified

in the summary and to keep the financial records of such transactions. The rational

for doing so is that it is common to use a cost per impression based pricing

methodology when charging an advertiser for advertisement placement.

Claim 111:   Capek, McCandless, and Merriman disclose the computer

implemented method of Claim 101, further comprising: processing information

regarding a web site or a link visited, utilized, or navigated, by an individual or a user

in connecting to a computer or a web site associated with the merchant. (Capek: Col

4, lines 15-39)

Claim 114:   Capek, McCandless, and Merriman disclose the computer

implemented method of claim 101, further comprising: at least one of storing and

providing information regarding a past success rate of an advertisement and a

success rate of the content provider. (Col 3, line 66 through Col 4, line 8)

Claim 115:   Capek, McCandless, and Merriman disclose the computer

implemented method of claim 101. While Capek and McCandless are silent

regarding the method used for contacting the merchant to provide information

regarding the number of placements server, it would have been obvious to one of

ordinary skill in the art at the time the invention was made to contact the merchant

via a common communication means such as the telephone, postal mail, or

electronic mail. The rational for doing so is that there are a limited number of

predictable ways in which the information could be conveyed to the merchant and e-

mail is one such predictable method.

5.   Claims 116 and 117 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Capek (U.S. Patent Number: 6,026,369) in view of McCandless

("Web advertising" Intelligent Systems and Their Applications, IEEE, Volume:

13, Issue: 3, May/Jun 1998, page(s): 8-9) in view of Merriman et al. (U.S. Patent

Number: 5,948,061) in further view of Goldhaber (U.S. Patent Number: 5,794,210).

Claims 116 and 117:   Capek, McCandless, and Merriman disclose the computer

implemented method of claim 101. While Capek and McCandless are silent

regarding the administering of a financial account for the merchant or for the content

provider, the analogous art of Goldhaber discloses an advertisement server that

places advertisements and administers financial accounts for the merchant (Col 20,

lines 8-35). Therefore, it would have been obvious for the Content Distribution

Network of Capek to administer a financial account for the merchant or the content

provider. The rational for doing so is to bring advertising buyers and sellers together

more quickly, less expensively, from larger populations, and with greater accuracy

than other existing sales mechanisms (Goldhaber: Col 20, lines 36-40).

Response to Arguments

6.   Applicant's arguments with respect to amended claims 101, 102, 104, 109, 110, 112, 113, 118, and 119 and newly submitted claims 121 and 122 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Van Bramer whose telephone number is (571) 272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR

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Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like

assistance from a USPTO Customer Service Representative or access to the

automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-

272-1000.

JV
/J. V./
Examiner, Art Unit 3622

/Eric W. Stamber/
Supervisory Patent Examiner, Art Unit 3622